IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

OP.No. 3535 of 2003(U)

PETITIONERS:

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1. MADHURI. P., RECEPTIONIST, STED
   (SCIENCE & TECHNOLOGY ENTERPRENEURSHIP
   DEVELOPMENT) PROJECT, KOZHIKODE-673 002,
   RESIDING AT: "AMMA", NEAR GOVT.HIGHER
   SECONDARY SCHOOL, FEROKE P.O., KOZHIKODE.

2. GEEJABAI P.M., COMPUTER FACULTY
   STED PROJECT, KOZHIKODE-673 002,
   RESIDING AT: "SANTHOSH", 29/1265,
   KOTTOLI, KOZHIKODE-673 016.

3. P. SREEDHARAN, PROJECT ASSISTANT,
   STED PROJECT, KOZHIKODE-673 002,
   RESIDING AT: "PUTHIYOTTIL" HOUSE
   MUCHUKUNNU P.O., QUILANDY-673 307.

BY ADV. SRI.ALEXANDER THOMAS

RESPONDENTS:

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1. CHIEF SECRETARY TO GOVT.OF KERALA &
   CHAIRMAN, STEERING COMMITTEE,
   STED PROJECT OFFICE OF THE CHIEF SECRETARY
   GOVT.SECRETARIAT BUILDINGS,
   THIRUVANANTHAPURAM-695 001.

2. EX-OFFICIO SECRETARY TO GOVT. OF
   KERALA, SCIENCE TECHNOLOGY & ENVIRONMENT
   DEPARTMENT & CHAIRMAN, STED (SCIENCE,
   TECHNOLOGY & ENVIRONMENT COMMITTEE),
   GOVT.OF KERALA, SASTHRA BHAVAN, PATTOM,
   THIRUVANANTHAPURAM.

3. PROJECT DIRECTOR, STED PROJECT
   5TH FLOOR, INDUS AVENUE
   KALLAI ROAD, KOZHIKODE - 673 002.

4. T.K. MANZOOR, PROJECT DIRECTOR,

STED PROJECT, KOZHIKODE-673 002.

BY ADV. SRI.K.RAMAKUMAR
GOVERNMENT PLEADER SRI. NOBLE MATHEW
SRI.P.N.RAVINDRAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/01/2007 THE COURT, ON THE SAME DAY, DELIVERED THE FOLLOWING:

PETITIONERS' EXHIBITS:

EXT. P1TRUE COPY OF PROCEEDINGS DT. 19-11-2002.

EXT.P2 PROCEEDINGS DT. 17-1-2003.

EXT.P3 SHOW CAUSE NOTICE DT. 5-11-2002.

EXT.P3(a) MEMO ISSUED TO 1ST PETITIONER.

EXT.P3(b) RELAVENT EXTRACT OF DESPATCH REGISTER.

EXT.P4 EXPLANATION DT. 13-11-2002.

EXT.P5 RELEVANT EXTRACT OF NEWS ITEM DT. 20-1-2003.

EXT.P6 MEMO DT. 14-1-2002.

EXT.P7 MEMO DT. 14-1-2002.

EXT.P8 SHOW CAUSE NOTICE DT. 15-1-2003.

EXT.P9 SHOW CAUSE NOTICE DT.15-1-2003.

EXT.P10 SHOW CAUSE NOTICE DT. 15-1-2003.

EXT.P11 EXPLANATION DT. 231-1-2003.

EXT.P12 EXPLANATION DT. 21-1-2003.

EXT.P13 EXPLANATION DT. 20-1-2003.

EXT.P14 TERMINATION ORDER DT. 22-1-2003.

EXT.P15 TERMINATION ORDER DT. 22-1-2003.

EXT.P16 TERMINATION ORDER DT. 22-1-2003.

EXT.P17 RELEVANT EXTRACT OF OF PROFILE.

EXT.P17(a) RELEVANT EXTRACT OF OFFICIALPROSPECTUS.

EXT.P17 (b) LETTER DT. 22-2-2002.

EX.P7 (c) RELEVANT EXTRACT OF COMMUNICATION DT. 22-1-2003.

EXT.P18 GOVT. LETTER DT. 24-6-2002.

EXT.P19 REPORT IN MATHRUBHUMI DT. 18-1-2005.

EXT.P20 NOTICE ISSUED BY STETE HUMAN RIGHTS COMMISSION.

EXT.P21 CRIMINAL COMPLAINT IN C.C.3/2004.

EXT.P21(a)DIARY EXTRACT IN C.C.NO.3/2004.

EXT.P21(b) ORDER DT.14-6-2004.

EXT.P22 FIR IN CRIME NO. 31/2004.

RESPONDENTS' EXHIBITS:

EXT. R3(a) GOVT. ORDER DT. 26-3-2001.

EXT.R3(b) ENQUIRY REPORT.

[TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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O.P. No. 3535 of 2003

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Dated this, the 12th January, 2007.

J U D G M E N T

Petitioners are three employees of the STED Project, Kozhikode, which is a project originally initiated by the National Science and Technology Entrepreneurship Development Board under the Department of Science and Technology, Government of India in 1985, which was later reconstituted as an autonomous body under the Government of Kerala vide G.O(Rt) 103/2001/STED dated 26-3-2001, which is Ext. R3(a) produced along with the counter affidavit of respondents 3 and 4 in this original petition. They were appointed as receptionist, computer faculty and project assistant respectively in the STED project. The first and second petitioners are lady employees. They raised allegations of gender harassment against the 4th respondent, who was the Project Director of the STED project. According to the petitioners, in retaliation for the same, a mock enquiry was got conducted through the additional District Magistrate, Kozhikode, without complying with the principles of natural justice and on the basis of that report, by Exts. P14 to P16, the petitioners were dismissed from service. The allegations against them were in fact a corollary to the allegations raised by the petitioners against the 4th respondent. When the petitioners raised allegations of gender harassment against the 4th respondent which was supported by the 3rd petitioner, the 4th respondent raised allegations that the petitioners have been propagating false allegations against him. There was a further allegation that the petitioners have been regularly late in attending the office. An enquiry was allegedly conducted on these allegations and on the premise that the allegations have been proved in the enquiry conducted by the Additional District Magistrate, the petitioners were dismissed from service. The petitioners are challenging Exts. P14 to P16 by which they were so dismissed from

service.

2. The contention of the petitioners is that the enquiry stated to have been conducted was without any notice to the petitioners and behind their back. They were not given any opportunity to either participate in the enquiry to defend themselves and to prove their innocence. The only thing the Additional District Magistrate has done was to question the petitioners in response to which the petitioners gave their version. According to the petitioners, no other procedure required to be complied with in a disciplinary enquiry such as giving of list of witnesses, list of documents, and opportunity to cross examine the witnesses of the management etc., have been complied with and therefore Exts. P14 to P16 orders issued based on such a report is patently arbitrary, violative of the principles of natural justice and unsustainable. It is also contended that the copy of the report based on which the petitioners were dismissed from service was never served on the petitioners giving them an opportunity to show cause why it should not be accepted.

3. Respondents 3 and 4 have filed a counter affidavit. They have disputed all the allegations against them. They also raised two technical contentions. One is that no writ petition is maintainable against the respondents in so far as the STED project is an autonomous body with no financial support from the Government and therefore not a State coming within the purview of Article 12 of the Constitution of India. The second is that since as admitted by the petitioners themselves, they are workmen coming within the definition of 'workman' under Section 2(s) of the Industrial Disputes Act, they should have raised an industrial dispute instead of filing an original petition. Of course, apart from the above technical objections, they also contest the original petition on merits also. In

view of these technical contentions, I have to first deal with the same.

4. Admittedly, the STED Project is a project evolved with the duel objective of entrepreneurship development and employment generation through science and technology inputs. The project was initiated by the National Science and Technology Entrepreneurship Development Board under the Department of Science and Technology, Government of India. By Ext. R3(a) Government Order, the Government of Kerala, after examining a study report submitted by one Prof. A.M. Salim, Chief (Projects) of Planning Board and also the recommendation made by the sub committee constituted by the third steering committee meeting of the STED, accorded sanction for the restructuring of STED Project so as to function as an autonomous body on condition that there will be no financial commitment on the part of the State Government in this regard. Learned counsel for the 4th respondent put stress on the words "there will not be financial commitment on the part of the State Government" to argue for the proposition that the Government have no financial participation in the project and therefore the STED Project would not be a State as defined under Article 12 of the Constitution of India.

5. I am of opinion that the financial participation of the Government alone is not the criteria to decide the question as to whether a particular body comes within the purview of Article 12 of the Constitution of India or not. As revealed from Ext. P17 produced by the petitioners along with their reply affidavit, the steering committee of the STED Project consists of the Chairman, who is the Chief Secretary of the Government of Kerala and members, ex-officio Secretary to Government , Department of Science & Technology and Environment, Secretary to Government, Planning and Economic Affairs Department, Secretary to Government, Industries

Department, Secretary to Government, Industries Department, District Collector, Kozhikode, Adviser, Department of Science & Technology, Senior Geologist, Geological Survey of India, Managing Director, Kerala Financial Corporation, Managing Director, Kerala Small Industries Development Corporation Ltd., Chief (Industries Division), State Planning Board and the Project Director, STED Project, Kozhikode. There is a Task Force Committee, which is to control the activities of the project which consists of the District Collector, Kozhikode as the Chairman and the Director, Department of Science & Technology of the Government of India, Executive Director of CWRDM, Kozhikode, Additional Secretary, Science, Technology & Environment Department of Government of Kerala, Chief (Projects), State Planning Board of the Government of Kerala, Director of Indian Institute of Spices Research, Deputy Director of Department of Economics & Statistics of the Government of Kerala at Kozhikode, Director, Regional Research Laboratory of the Government of Kerala, Professor or Architectural Engineering, Department of Architectural Engineering, District Planning Officer of the Government of Kerala at Kozhikode, Officer in charge of the MMFRI, Kozhikode, General Manager, District Industries Center, Kozhikode, Senior Geologist, Geological Survey of India, Kerala Unit and the Project Director, STED Project as members. The constitution of the screening committee leaves absolutely no room for doubt that the entire project is controlled by the Government of Kerala and no outside participation whatsoever of anybody other than the Government is involved in the running of the project. Deep and pervasive control by the Government on STED project is for anybody to see and the project is evidently exercising a public function. Going by the latest Supreme Court decisions, these parameters would be more than sufficient to hold that

the STED Project is in fact a State coming within the purview of Article 12 of the Constitution of India.

6. Even otherwise, certainly, a petition under Article 226 of the Constitution of India would lie against the STED Project. The Supreme Court in the decision in Zee Telefilms Ltd & another v. Union of India and others, [(2005) 4 SCC 649] held that against the Board of Control of Cricket in India, in which the State has no financial participation, since it discharges a public function, although no writ petition under Article 32 would lie, persons aggrieved by its action has a remedy under the Constitution by way of a writ petition under Article 226 of the Constitution. In paragraph 31 of the decision, it is held thus:

> "31. Be that as it may, it cannot be denied that the Board does discharge some duties like the selection of an Indian cricket team, controlling the activities of the players and others involved in the game of cricket. These activities can be said to be akin to public duties or State functions and if there is an violation of any constitutional or statutory obligation or rights of other citizens, the aggrieved party may not have a relief by way of a petition under Article 32. But that does not mean that the violator of such right would go scot-free merely because it or he is not a State. Under the Indian jurisprudence there is always a just remedy for the violation of a right of a citizen. Though the remedy under Article 32 is not available, an aggrieved party can always seek a remedy under the ordinary course of law or by way of a writ petition under Article 226 of the Constitution, which is much wider than Article 32."

This decision applies squarely to the facts of this case. Therefore, even assuming, without admitting, that STED project is not a 'State', a petition under Article 226 would lie against the arbitrary actions against its employees. That being so, I do not find any merit in the contention of respondents 3 and 4 that the STED Project, which is the employer of the petitioners is not a State and therefore no petition under Article 226 would lie against respondents herein.

7. The next contention raised by respondents 3 and 4 is that since, admittedly the petitioners are workmen, they should be

relegated to the remedy by way of an industrial dispute under the Industrial Disputes Act and the original petition should not be entertained for that reason. Since I have already held that Article 226 petition would certainly lie against the respondents and since for the purpose of deciding this case, no ascertainment of facts on evidence is actually necessary at least for the present, I am inclined to entertain this original petition in view of the facts disclosed in this original petition, which goes to show a patently arbitrary action in total violation of the principles of natural justice against the petitioners.

8. An authority exercising a public function much less even a private management is expected to comply with the principles of natural justice in the matter of disciplinary proceedings against its employees. The pleadings and the documents available before me on the very face of it reveal that the proceedings initiated against the petitioners, which culminated in their dismissal by Exts. P14 to P16 dismissal orders, have been issued in patent violation of all principles of natural justice. Therefore, I am inclined to entertain this original petition. Further, in addition to the challenge against Exts. P14 to P16, the petitioners are also aggrieved by the inaction on the part of the authorities in taking appropriate action against the 4th respondent when specific allegations of gender harassment have been raised by petitioners 1 and 2, which, according to them, was prima facie found to be worth examining further by the Commissioner of Police and as per Exts. P1 and P2, the Commissioner of Police, Calicut city has recommended that a Departmental action in accordance with the directions of the Supreme Court in Vishaka's case, [Vishaka & others v. State of Rajasthan & others, (1997) 6 SCC 241] is warranted in respect of the complaints of petitioners 1 and 2.

9. Having rejected the two technical contentions of the 4th respondent, I shall now proceed with the decision on merits.

10. The petitioners allege that the 4th respondent has indulged in cruel gender harassment against petitioners 1 and 2, which allegations were supported by the 3rd petitioner which is stated to be the reason for the ill-will of the 4th respondent against the petitioners resulting in an initiation of disciplinary proceedings which culminated in Exts. P14 to P16 orders. They would categorically allege that in spite of their repeated requests in this regard, the authorities concerned have not taken any steps to conduct a detailed investigation into the allegations of gender harassment raised by petitioners 1 and 2 in accordance with the directions of the Supreme Court in Vishaka's case. They seek appropriate directions from this Court to complete the investigation into the allegations of gender harassment raised by petitioners 1 and 2 within a time frame, especially since the Commissioner of Police, by Exts. P1 and P2, recommended such an investigation. They would further submit that Exts. P14 to P16 are the result of the antagonistic attitude of the 4th respondent towards the petitioners as a retaliatory measure for raising complaints regarding gender harassment practiced by the 4th respondent. According to them, except asking them questions which they have answered, the Additional District Magistrate, who is stated to have conducted an enquiry into the allegations against the petitioners, no other procedure such as issuing of notice of posting of enquiry, giving of list of documents and list of witnesses, examination of witnesses in the presence of the petitioners with opportunity to cross examine the witnesses etc., have not been resorted to by the Additional District Magistrate. They also allege that copy of the enquiry report of the Additional District Magistrate was not served on

the petitioners along with a show cause notice directing them to give their comments on the enquiry and the report thereon. They would submit that the first time they were made aware of the enquiry report was when respondents 3 and 4 produced the same along with their counter affidavit dated 26-2-2003 presented on 27-2-2003.

11. On the other hand, the 4th respondent would categorically deny all these allegations. He would submit that the petitioners have been spreading scandalous allegations against the 4th respondent without any basis and they have been regularly late in attending office, which were the charges levelled against the petitioners. Allegations were enquired into by not less a person than the Additional District Magistrate, Kozhikode, who submitted Ext. R3(b) report finding the petitioners guilty of the misconducts and therefore the procedure required to be followed in disciplinary proceedings have been strictly complied with. On these contentions, the 4th respondent would support the orders impugned in this original petition. Regarding the enquiry against the allegations of gender harassment raised by petitioners 1 and 2, it is submitted that an appropriate committee as contemplated under the Supreme Court decision has been constituted. However, it is an admitted fact that that committee has not taken any steps to finalise the enquiry as contemplated under the Supreme Court decision in Vishaka's case, even now.

12. I have considered the rival contentions in detail.

13. First, I shall deal with the disciplinary proceedings against the petitioners. No doubt, Ext. R3(b) enquiry report has been produced before me. But, I find that it is an apology for an enquiry report in a disciplinary proceedings. The respondents were not able to satisfy me that the enquiry report was submitted after complying

with the usual procedure expected of a disciplinary enquiry. Nothing has been brought out on record to prove that the enquiry as is usually expected to have been done in disciplinary proceedings has been conducted by the Additional District Magistrate. There is no evidence forthcoming to the effect that the petitioners were given a notice of any enquiry. There is nothing to indicate that any witnesses have been examined with list of witnesses and list of documents issued to the petitioners. Needless to say the petitioners were never given any opportunity to cross examine any witnesses even if any witnesses were actually examined by the Additional District Magistrate. On the other hand, the Additional District Magistrate himself has in Ext. R3 (b) specifically stated that he has not gone into a full enquiry regarding the particular incident and a detailed enquiry is required to reveal the full details. I am more than satisfied that on the basis of Ext. R3(b) report, no action whatsoever could have been validly taken against the petitioners. Respondents 3 and 4 could not also satisfy me that a copy of Ext. R3(b) report has been served on the petitioners. As such, the so called enquiry is clearly against all canons of disciplinary proceedings as known to law. Since Exts. P14 to P16 are based on such an enquiry, nothing more is required to hold that the same are arbitrary, violative of principles of natural justice, unsustainable and liable to be quashed. I do so.

14. Having quashed the dismissal orders issued to the petitioners, I shall go on to the question as to what should be the reliefs to be granted to the petitioners in the matter of the disciplinary action.

15. Before that, I feel that some orders should be passed regarding the completion of the enquiry into the allegations of gender harassment raised by petitioners 1 and 2 against the 4th respondent,

expeditiously, which is in fact the prayer of not only the petitioners but also the 4th respondent who submits that because of the pendency of that enquiry, he is also prejudiced since a criminal complaint is pending against the 4th respondent in respect of allegations of gender harassment filed by the 1st petitioner. Therefore, in the interests of both parties, it is only just that appropriate orders be issued to complete the proceedings expeditiously. Counsel for the 4th respondent also brings to my attention that Crl. M.C.No. 1060/2005 is pending before this Court for quashing that criminal complaint, namely, Ext. P21 filed by the 1st petitioner as C.C.No. 33/2004 before the Judicial I Class Magistarate-III, Kozhikode. Accordingly, I direct the 2nd respondent to constitute a committee as contemplated under the decision of the Supreme Court in Vishaka's case, if not already constituted and complete the proceedings as contemplated under law within a period of three months from the date of receipt of a copy of this judgment.

16. In this connection, I note that the petitioners have got a contention that the committee already constituted is not in accordance with the decision of the Supreme Court whereas counsel for the 4th respondent would submit that it is. This is a matter which should gain the attention of the 2nd respondent while completing the proceedings as directed above. I further make it clear that I have not expressed any opinion whatsoever on the merits of the rival contentions on the question of gender harassment which is the subject matter of the enquiry pending as contemplated in the Supreme Court decision as also in the criminal case pending.

17. After the report of that committee is received, it would be open to the disciplinary authority of the petitioners, if the disciplinary authority is still of opinion that the disciplinary proceedings against

the petitioners should be continued, to complete the disciplinary proceedings after complying with the principles of natural justice such as notice calling for explanations of the petitioners, conducting an enquiry in compliance with the principles of natural justice as contemplated by law, after giving an opportunity to the petitioners to defend themselves in that enquiry, giving copy of the enquiry report to the petitioners, calling upon them to give their comments, giving show cause notice regarding the punishment etc. if they are found guilty. In the meanwhile, the petitioners shall be reinstated in service forthwith by the 3rd respondent and allow them to continue in service as before till final orders are passed in the disciplinary proceedings to be initiated and completed as directed above. However, the question regarding their entitlement to backwages for the period when they were kept out of service would be decided only after the disciplinary proceedings are finally concluded, subject to the result of the disciplinary proceedings. I also direct that the disciplinary proceedings shall also be completed as expeditiously as possible, after the enquiry on the allegations against the 4th respondent on gender harassment raised by the petitioners but not later than three months from the date of completion of that enquiry. The original petition is disposed of as above.

Sd/- S. Siri Jagan, Judge.

Tds/